

SAM GLASSOCK III
VICE CHANCELLOR

**COURT OF CHANCERY
OF THE
STATE OF DELAWARE**

COURT OF CHANCERY COURTHOUSE
34 THE CIRCLE
GEORGETOWN, DELAWARE 19947

November 28, 2011

Jeremy Ryan, Esquire
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Potter Anderson & Corroon LLP
Hercules Plaza, 6th Floor
1313 North Market Street
Wilmington, DE 19899

In re: Weaver Holding Company
Civil Action No. 6199-VCG

Dear Counsel:

This is my decision on the Motion of Silverman Consulting, Inc. (“Silverman”) to Waive the Appraisal and Bond Requirements of 10 *Del. C.* §§ 7382 and 7383. The following facts are taken from the Petition and its supporting memorandum, as well as from prior orders in this matter.

On February 15, 2011, Silverman became the Assignee under a Trust/Assignment for the benefit of the creditors of Weaver Holding Company (the “Assignor”). The object of the Trust was “the orderly disposition of all right, title and interest in all of the transferred assets. . . of the Assignor and the distribution of the proceeds therefrom to creditors of the Assignor in accordance with [10 *Del. C.* § 7381, *et seq.*].” This Court

accepted jurisdiction and ordered an inventory to be prepared on March 4, 2011. According to the inventory, the Assignor's assets consist of unliquidated stock of the Assignor of nominal value, \$182,000.00 of accounts receivable, and \$270,368.00 in cash. Before me is Silverman's Motion to Waive the Appraisal Requirement and Bond Requirement of 10 *Del. C.* §§ 7382 and 7383. Silverman's efforts have disclosed only one known creditor entitled to the Assignor's assets, who (according to Silverman) agrees with the values of the assets stated in the appraisal, and who also consents to waive the bond requirement. The secured indebtedness of the Assignor to this creditor exceeds the value of the assets held by Silverman by a factor of 7.5.

10 *Del. C.* § 7382 directs this Court to "appoint two disinterested and competent persons to appraise the estate assigned." Because the only assets of value in the estate assigned are cash or cash receivables, and because the only party in interest agrees with the face valuation of those assets, appointing two appraisers would serve no useful purpose and would simply reduce the amount available to the creditor of the Assignor, for whom Silverman acts as trustee. The statute clearly anticipated assignment of items of tangible property which disinterested laymen could appraise; it did

not contemplate appraisal of bank accounts. Therefore, the Motion to Waive the Appraisal Requirement is granted.

10 *Del. C.* § 7383(a) provides that “[t]he Assignee shall, as soon as the inventory and appraisal required by § 7382 of the Title have been filed, give bond with sufficient surety, to be approved by the Court of Chancery in an amount fixed by the Court, *being not less than the total amount of the inventory and appraisal of the estate so assigned*” (emphasis added).

The direction of the Legislature could not be clearer that the bond requirement here, despite the proffered waiver of the creditor, be set at not less than the total amount of the inventory and appraisal. Although I have waived the appraisal requirement here because, in effect, this estate is self-appraising, I have no basis to waive the bond requirement explicitly provided by the Legislature. Therefore, Silverman must enter a bond in the amount of the inventory, \$452,368.00. The amount of the security for this bond, however, is left by the statute to the discretion of the Court: “The Assignee shall. . .give bond with sufficient surety, to be approved by the Court of Chancery. . . .” In determining what surety is sufficient here, it is appropriate to consider that the sole interested creditor of the Assignor agrees to waive any bond, presumably to preserve the assigned estate from

the expense thereof. Apparently, its interest in maximizing recovery against the Assignor's debt outweighs its interest in security. The only purpose of the bond requirement is to ensure payment to the creditors. Therefore, I find it appropriate that the bond in this matter be unsecured. Once Silverman has (1) submitted an affidavit from the creditor waiving its right to an appraisal and secured bond under 10 *Del. C.* §§ 7382 and 7383, and (2) submitted to a bond in the amount of \$452,368.00, unsecured, the appraisal and bonding requirements of 10 *Del. C.* §§ 7382 and 7383 shall be deemed satisfied. To the extent that the foregoing requires an order to take effect, IT IS SO ORDERED.

Sincerely,

/s/Sam Glasscock III

Sam Glasscock III